

NORBERT CHOONG KAI CHONG & ANOR. v. MOHAMED IDRIS BIN HAJI IBRAHIM & ANOR.

[O.C.J. (Harun J.) October 23, 1978]

[Kuala Lumpur — Election Petitions Nos. 2 & 3 of 1978]

Election — Petition by rejected candidates for declaration that election of respondent was void — Election Offences Act, 1954, ss. 32(b) & 34 — Election Petition Rules, 1954, rr. 4(1), 12(1), (2) & (3) — Elections (Conduct of Elections) Regulations, 1959, regs. 4(2), 6(2), 7(1), 28 — Interpretation and General Clauses Ordinance, 1948, s. 7.

These were petitions for a declaration that the election of the first respondent was void.

Held, dismissing both petitions: (1) the respondents must know precisely on which particular ground the petitioner is relying on to declare an election void. The omission in the petition to state that the ground relied on was section 32(b) of the Election Offences Act was therefore fatal to the election petition;

(2) the second petitioner in this case had failed to comply with rule 12 of the Election Petition Rules. He had only given security of \$500 instead of \$1,250 as required by the said rule;

(3) the duty of a Returning Officer is to see that all blanks in Form 3 are filled up in accordance with Regulation 4(2). If there are any omissions he has the power to reject the Nomination Papers under Regulation 7(1)(b). If there are *misnomers or inaccurate* descriptions he must decide whether these can be cured by regulation 28. If they cannot be cured then he has the power to reject the Nomination Papers under regulation 7(1);

(4) the fact that one copy of the Nomination Paper had been completely filled up by the first petitioner could not validate the other two copies because regulation 4(2) of the Elections (Conduct of Elections) Regulations, 1959 requires nomination papers to be submitted in triplicate.

Cases referred to:

- (1) *Isahak Hamid v. Mustapha* [1965] 2 M.L.J. 18, 21.
- (2) *Muip bin Tabib v. Dato James Wong* [1971] 1 M.L.J. 246, 247.
- (3) *Abdul Karim v. Mohamed Taib* [1969] 2 M.L.J. 72.
- (4) *Chong Thain Vun v. Watson & Anor.* [1968] 1 M.L.J. 65, 75.
- (5) *Devan Nair v. Yong Kuan Teik* [1967] 1 M.L.J. 261.
- (6) *Yong Kuan Teik v. Devan Nair* [1965] 2 M.L.J. 162, 164.
- (7) *Ali Amberan v. Tunku Abdullah* [1970] 2 M.L.J. 15, 17.
- (8) *Abdul Karim v. Mohamed Taib & Anor.* [1969] 2 M.L.J. 72.
- (9) *Tengku Korish v. Mohamed & Anor.* [1970] 1 M.L.J. 6.
- (10) *Harcharan Singh v. Mohinder Singh* A.I.R. 1968 S.C. 1500.
- (11) *Mather v. Brown* (1876) 1 C.P.D. 596.
- (12) *Moorhouse v. Linney & Ashton* (1885) 15 Q.B.D. 273.
- (13) *The Queen v. Tugwell* (1868) L.R. 3 Q.B. 704, 712.
- (14) *Baldwin & Ors. v. Ellis & Ors.* [1929] 1 K.B. 273.
- (15) *Gothard v. Clarke* (1880) 5 C.P.D. 253.
- (16) *Marton v. Gorrill* (1889) 23 Q.B.D. 139.
- (17) *Parsons v. Brand* (1890) 25 Q.B.D. 110.

ELECTION PETITIONS.

The first petitioner on his own behalf (*Philip Chong* with him).

Datuk Wan Mustapha for the second petitioner.

Y.M. Raja Abdul Aziz Addruse (Lim Lek Yan with him) for the first respondent.

S.F.C. Datuk Yusof Abdul Rashid for the second respondent.

Cur. Adv. Vult.

Harun J.: On June 21, 1978, four candidates for election for the parliamentary constituency of Setapak duly delivered their nomination papers to the Returning Officer (the second respondent) at City Hall, Kuala Lumpur. Objections were made to the nomination papers of all four candidates. The Returning Officer rejected the nomination papers of three candidates and declared the remaining candidate (the first respondent) duly elected. Two of the rejected candidates now petition for a declaration that the election of the first respondent is void.

Petition of Ahmad Subki Latif.

Raja Abdul Aziz has raised the point that on Thursday October 19 he wrote a letter to Dato Wan Mustapha indicating the objections to the petition that he intended to make. That letter was received by Dato Wan Mustapha at 12.50 p.m. the same day in Kota Bharu. On October 20 he filed a notice of motion to move this court (on October 23) to strike off the petition on grounds contained in his letter of October 19. As Friday is a public holiday in Kelantan, the notice of motion was served on Dato Wan Mustapha on Saturday October 21 at 12.30 p.m. Raja Abdul Aziz contends that more than two clear days notice has been given. Dato Wan Mustapha on the other hand says he has not been given two clear days notice of the motion as required by RSC. O.52 r.5. In my view, the point taken is irrelevant on the ground that objections to an election petition are issues of law which should be disposed of as preliminary issues for which no notice is required.

The election petition of Ahmad Subki bin Haji Abdul Latif is objected to by the first respondent on the following grounds:

- F** (i) that the petition does not state the right of the petitioner to petition within section 34 of the Election Offences Act, 1954;
- (ii) that the petition has not satisfied the requirement of section 32 of the Election Offences Act, 1954; and
- G** (iii) that the petitioner has not given security for costs as required by rules 12(1) and (2) of the Election Petition Rules, 1954.

And the objection by the second respondent is on the ground that it is not founded on section 34(c) of the Election Offences Act, 1954.

H Section 34 sets out the categories of persons who may present election petitions and subsection (c) of that section reads:

"some person alleging himself to have been a candidate at such election."

I It is contended that the petitioner having been disqualified on Nomination Day ceased to be a *candidate* at such election and therefore is not entitled to present a petition. There is no merit in this argument. The Elections (Conduct of Elections) Regulations, 1959 (hereinafter referred to as "the Regulations") describes a person who intends to stand for election as a "candidate" and treats him as such throughout the Regulations. In any event, if the contention is valid then no candidate who is disqualified on Nomination Day will be able to file an election

petition which obviously was never the intention of the legislature. Paragraph 1 of the petition reads:

"Your petitioner Ahmad Subki Latif is a person who was a candidate at the *above election* or having been nominated was wrongly disqualified."

Now it is a fact that on June 21, 1978 petitioner Ahmad Subki was a candidate at the election and it would appear on the face of his statement that his right to be a petitioner is correctly made and in compliance with section 34(c) of the Election Offences Act. That, however, is not the case here as the words "the above election" in paragraph 1 of his petition refers to

"Election for Setapak Parliamentary Constituency Holden on the 8th day of July, 1978."

appearing at the head of the petition. This date was Polling Day in respect of contested elections but as far as the Setapak Constituency was concerned there was no election on July 8 as the election for that constituency had concluded on June 21 when the Returning Officer declared the first respondent elected in accordance with Regulation 10 of the Regulations. It was contended for the petitioner that there was no "election" on June 21 as that was Nomination Day. That is true in respect of contested elections but in respect of uncontested elections Nomination Day is "the election" as the word *election* "comprises the many steps in the process whereby a candidate is returned from the issuing of a notification calling an election up to the declaration of the results": *Isahak Hamid v. Mustapha*.⁽¹⁾ See also Form 2 of Schedule to the Regulations — Notice of Election — paragraph 1: "if there is no contest, to the *election* of a member for the said constituency." It follows that this petition does not comply with section 34(c) of the Election Offences Act.

Next, rule 4(1) of the Election Petition Rules, 1954 provides that an election petition shall contain a statement of "the facts and grounds relied on to sustain the prayer". The grounds for avoiding elections appear in Part VI of the Election Offences Act and on the facts of this case the only possible ground is section 32(b) which reads:

"The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge:

- (b) non-compliance with the provisions of any written law relating to any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election."

Here nowhere in the petition is it stated that the ground relied on is section 32(b) of the said Act. This omission in my view is fatal to an election petition since such a petition may be presented on one of two grounds under section 31 and one of five main grounds under section 32 of the Election Offences Act and the respondents must know precisely on which particular ground the petitioner is relying on to declare an election void: see also *Muip bin Tabib v. Dato James Wong*.⁽²⁾ It was contended for the petitioner that it is not necessary to refer to the law in the petition as a rejected candidate has the right to bring an election petition under the proviso to Regulation 7(5) of the Regulations. I do not agree, as that right is conferred by section 32(b) of the Election Offences Act and not

by the said proviso which is only a reminder of that right: see also *Abdul Karim v. Mohamed Taib & Anor.*⁽³⁾ I hold that this petition is not in accordance with rule 4 of the Election Petition Rules.

Finally, rule 12 of the Election Petition Rules, provides that a petitioner shall give security for costs of an election petition. The minimum amount is \$500 but if the number of charges in any petition exceed three, additional security of \$250 shall be given for each additional charge in excess of the first three. Sub-rule (3) of rule 12 further provides that if security is not given by the petitioner "no further proceedings shall be had on the petition, and the respondent may apply to the judge for an order directing the dismissal of the petition and for the payment of the respondent's costs". In this case I find that there are seven charges in the petition but the petitioner has only given security of \$500. The petition fails on this ground also: see *Chong Thain Vun v. Watson & Anor.*⁽⁴⁾

For these reasons it is suggested that this petition be struck off but in view of what was said by the Privy Council in *Devan Nair v. Yong Kuan Teik*,⁽⁵⁾ I dismiss this petition with costs. Moneys deposited by way of security may be applied towards payment of taxed costs.

Petition of Norbert Choong Kai Chong.

The grounds for this petition are as follows:

- (a) The second respondent was wrong in rejecting the nomination papers duly delivered by your petitioner on the 21st day of June, 1978 solely on the ground that your petitioner has failed to state the Constituency of the electors assenting to your petitioner's nomination in his nomination form/s. The nomination papers of Ishak Surin and Subki Latiff were also rejected;
- (b) The second respondent's rejection of the nomination papers duly delivered by your petitioner was null and void and that the above ground upon which the said second respondent purported to hold the said nomination papers to be invalid was not one of the grounds upon which he was empowered to do so by Regulation 7 of the Elections (Conduct of Elections) Regulations, 1959. As a result of the said rejection the second respondent declared the first respondent as being elected without contest. The said rejection amounted to a non-compliance with the provisions of a written law relating to an election falling within the purview of section 32(b) of the Election Offences Act, 1954;
- (c) The second respondent failed to comply with Regulation 7 of the Elections (Conduct of Elections) Regulations, 1959, in rejecting the several objections raised by your petitioner against the first respondent's nomination papers. Such non-compliance falls within the purview of section 32(b) of the Election Offences Act, 1954. The first respondent was declared as being elected without contest.

And the petitioner prays *inter alia*:

- (a) A declaration that the first respondent was not duly elected or ought not to have been returned.

(b) A declaration that the election is void. The facts are as follows:

In accordance with Regulation 6(2) all candidates are required to deliver to the Returning Officer three copies of their Nomination Papers in Form 3 of the First Schedule to the Elections (Conduct of Elections) Regulations, 1959 between the hours of 9 a.m. and 11 a.m. on June 21, 1978. The petitioner and the other three candidates did so.

After 11 a.m. the Returning Officer posted the first copy of the Nomination Papers of all four candidates outside the nomination centre in the foyer in front of the Town Hall for public viewing: Regulation 6(3). This foyer was also used for the same purpose by the Returning Officer of the Sungei Besi Constituency.

At the same time the Returning Officer posted the second copy of the Nomination Papers of all four candidates in the Nomination Centre itself to permit the candidates, proposer, seconder and one other person appointed by each candidate to examine the nomination papers of all four candidates: Regulation 6(4).

The Returning Officer kept the third copy for himself. He received the following objections in due time:

By Norbert Choong against Mohamed Idris.

By Ahmad Zaharan against

(i) Ahmad Subki Latif — two objections

(ii) Norbert Choong — four objections

(iii) Ishak Surin — two objections.

By Ahmad Subki against Mohamed Idris.

By Ishak Surin against Mohamed Idris.

In exercise of his powers under Regulation 7(3) the Returning Officer lodged objections against three of the candidates on the grounds that the Nomination Papers were not in accordance with Regulation 4(2) by omitting to fill up "Setapak" after the words:

"We, the undersigned, electors of the Constituency of..." and before the words:

"hereby assent to the foregoing nomination—"

in the Nomination Papers of:

(i) Ishak Hj. Surin — in all three copies;

(ii) Ahmad Subki Latif — in all three copies; and

(iii) Norbert Choong — in two copies.

All these objections are in writing. The Returning Officer dealt with them in accordance with Regulation 7(4). He rejected identical objections raised by three of the candidates against Mohamed Idris which was that in all three spaces in respect of all three copies of his Nomination Papers where the word "SETAPAK" should be written are blurred and confusing. In addition there was an extra 'N' in the name of the second assenting elector in one copy and an extra 'I' in the 'Haji' of Mohamed Idris' name appearing after "signed by the said nominee" at the bottom of the Form of one copy. I have examined all three copies of Mohamed Idris' Nomination Papers and find that all three had been typed out by an electric typewriter. The word "Setapak" had been typed and then erased

A albeit not completely and over it was typed the word "Parlimen" followed very clearly by the word "Setapak". The extra 'N' and 'I' were in effect letters which had been typed but not completely erased. In spite of the unsuccessful erasures I find as a fact that the Nomination Papers of Mohamed Idris (first respondent) are clear and not confusing. The Returning Officer also rejected the objections of Mohamed Idris raised against the other three candidates except in relation to the omission of "Setapak" which he had himself raised and in the case of Norbert Choong the objection to the identity card number of the attesting witness with eight digits when all identity cards have only seven digits. On the last objection, the Returning Officer sent for the Identity Card of the witness. She could not produce it as it had been lost but from the Report of Loss he found that the number was 3616097 whereas in the Nomination Paper it was 36160978. Mr. Choong explained this by stating that he had copied the number from the electoral roll and had mistaken the letter 'B' after the number for the figure '8'. I have examined the electoral roll and find that nearly all the identity card numbers therein bear the letter 'B' to indicate "Baru" or new identity card number. I find as a fact that the identity card number of the said attesting witness is incorrectly stated. I also find as a fact that the assenting electors had omitted to fill up in the space provided therefor the name of the constituency they claim to be electors of in two copies of the petitioner's Nomination Papers. In the event the Returning Officer rejected the Nomination Papers of the petitioner on these two grounds under Regulation 7. The question is was he right in doing so.

F It is, I think, necessary to examine the manner in which the election was conducted. In accordance with Regulation 4(4), the Returning Officer supplied free of charge the forms of nomination papers and statutory declarations to the candidates one week before June 21, 1978. The candidates, therefore, had ample time to study the forms, take advice and fill up the forms. According to the petitioner, some candidates even take legal advice or the assistance of party officials and relatives to fill up the forms. The form (Form 3) used in this instance was printed by the Government Printer on February 11, 1978 in double foolscap size and is in accordance with Regulation 4(2). The form was first introduced in 1959. There have been amendments to the form in 1964, 1969 and 1973 but all these amendments were very minor ones and the Form 3 used on June 21, 1978 has not materially changed since 1959 during five General Elections.

H Be that as it may, a candidate attempting to fill up Form 3 for the first time is bound to get into difficulties as happened to three of the candidates in this case. The format of the form, to put it mildly, is a veritable bureaucratic booby-trap. It is in two languages, Malay and English with different printing styles for each language. It is intended to be used for elections to both the Dewan Rakyat and Dewan Negeri. The blanks to be filled in are related to the Malay language version, so that if a person is reading the English version, it is likely that he may miss the blanks. As a candidate has to file different nomination papers for Parliamentary and State Constituency

elections, he must also make the appropriate deletions to indicate whether he is standing for Parliament or the State Legislature. In my view there is no reason why Form 3 should not be in the Malay language only and separate forms be printed for election to the Dewan Rakyat and Dewan Negeri. There are no instructions on how to fill up the form in the form itself, but the attention of candidates is drawn to the Elections Act, 1958 and the Elections (Conduct of Elections) Regulations, 1959.

Another aspect of the elections is the Returning Officer. He is invariably a civil servant with a reputation of impartiality and decidedly non-partisan in political matters. According to the Regulations, he must make a decision on the spot whether to accept or reject the nomination papers of candidates so that the elections could be got under way. He must, therefore, be guided by a clear set of rules and regulations. According to the second respondent, just prior to the election, he attended a briefing at the University of Malaya conducted by the Election Commission. He had also been an Assistant Returning Officer in the 1974 General Election. He was also given written guidelines on how candidates should fill up the forms. It is evident from the written grounds of his decision in rejecting the nomination papers of the candidates given on June 21, 1978, that he relied on these guidelines and the Regulations itself. It was contended by the petitioner that a Returning Officer should correct clerical errors, in this instance by deleting the superfluous '8' in the identity card number of the attesting witness and point out omissions so that these may be filled up, in his case the missing word "Setapak" in two of his forms. On a perusal of the Regulations as a whole I find that there is no such duty cast upon the Returning Officer. The position, however, is different in India. The Representation of the People Act, 1951 of India provides, *inter alia*, in section 33 thereof:

"On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked."

Section 36(4):

"The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

Our election laws and regulations were formulated with full knowledge of the English and Indian laws. Indeed our election laws are "based on, though it does not follow in every detail, the law in the United King-

dom": *Yong Kuan Teik v. Devan Nair*,⁽⁶⁾ see also *Ali Amberan v. Tunku Abdullah*.⁽⁷⁾ It is, therefore, reasonable to infer that if the Indian provisions like sections 33 and 36 of their Act do not appear in our laws, the omission by the legislature is intentional. I make these observations because the petitioner has relied very heavily (no less than 40 Indian decisions) to support his contention that his omission to fill up the Nomination Forms completely is not a substantial ground on which to reject his Nomination Papers. It is clear that if the Indian decisions are followed, the petitioner has every reason to succeed.

This brings me to the real issue in this petition viz.: the contention of the petitioner that a Nomination Paper can only be rejected on substantial grounds and the contention of the respondents that Nomination Papers must be filled up completely and accurately. There appear to be conflicting decisions by our own courts on this issue. The question then is which decision this court should follow.

Abdul Karim v. Mohamed Taib & Anor.⁽⁸⁾:

In this case the Returning Officer had rejected the Nomination Papers of a candidate whose name had not been filled up in the blank space after the words:

"signed by the said nominee..."

in the attestation clause at the bottom of Form 3. The Election Judge allowed the petition on the grounds that:

"There is no express provision in the Regulations requiring that in completing a form prescribed thereby there can be no deviation.

As far as I can see the effect of these two provisions (Regulation 28 of the Regulations and section 7 of the Interpretation and General Clauses Ordinance, 1948) is that an omission should not be regarded as a non-compliance with the Regulations unless it amounts to a misnomer or an inaccurate description within the meaning of regulation 28 or unless it affects the substance or is calculated to mislead. As a matter of general guidance, a returning officer should not insist upon absolute accuracy in completing a nomination paper but there must be substantial compliance with the material requirements of the Regulations, particularly with those regarding description or particulars which are to be given in the nomination paper.

It is therefore clear that the returning officer did not have regard to these two provisions in arriving at his decision. It should have been obvious that in the form as completed the omission is utterly inconsequential. Indeed to insert the name in the clause is to state the obvious. In my judgment, therefore, the returning officer erred in his decision."

With respect, I find myself unable to agree with that decision for the following reasons:

Section 7 of the Interpretation and General Clauses Ordinance, 1948 reads:

"Save as is otherwise expressly provided, whenever forms are prescribed slight deviations therefrom not affecting the substance or calculated to mislead, shall not invalidate them."

Clearly this section does not apply in the context in which it is made here. In my opinion section 7 applies only to the printed form and not to the manner that the form is filled up. In the instant case the printed Form 3 used for the nomination varies with the prescribed form in the Schedule to the Regulations which is in the English language only and does not bear the heading:

"The Elections Act, 1958.

Elections (Conduct of Elections) Regulations, 1959.

Elections (Conduct of Elections) (Sabah & Sarawak) Regulations, 1968."

The effect of the said section 7 (now section 62 of the Interpretation Act, 1968) is merely to validate the printed form used here although there are deviations (additions) to the form prescribed in the Regulations.

Regulation 28 reads:

"No misnomer or inaccurate description of any person or place named or described in any notice or other document whatsoever prepared or issued under or for the purposes of these Regulations shall in any wise affect the operation of these regulations as respects that person or place if that person or place is so designated in such notice or document as to be identifiable."

I think the decision went too far in applying Regulation 28 to cases of *omission*. The regulation speaks of *misnomer* which means "a mistake in a name": *Ballentine's Law Dictionary* (2nd Edition); and *inaccurate description* of any person or place. There can neither be a misnomer or inaccurate description if there is a total blank. In my view what Regulation 28 seeks to save are cases of misspelling the name of a person or place e.g. if Setapak was spelt as Satapak or in our present case if Haji is spelt Hajii or Husin as Husinn. In my view Regulation 28 did not apply to this case.

Finally, I think that the decision went too far when it held that an omission should not be regarded as a non-compliance with the Regulations unless it *affects the substance* or is calculated to mislead. This reasoning is in line with the Indian decisions. As I have said earlier, Indian Returning Officers have a duty to correct errors and omissions. Our Returning Officers have no such duty and I think for a very good reason. If such a duty is cast upon them there is nothing to stop allegations of favouritism or bias if Returning Officers point out the mistakes of one candidate and omit to do the same for another candidate even though they genuinely overlooked the mistakes of the latter. But of greater significance, *Abdul Karim's* case casts a burden upon Returning Officers to decide on what omissions are substantial and what are trivial. Even judges in India have delivered conflicting judgments on the subject. In my view, if the legislature had intended that omissions should be ignored then it would have specifically made such a provision in Regulation 28 as it does for misnomer and inaccurate descriptions. If it is held, as *Abdul Karim's* case did, that the omission is inconsequential as to insert the name in the clause is to state the obvious, the remedy lies with the legislature not to provide the blank space. But in my opinion, it is not inconsequential as a similar requirement is made in the form for Statutory Declaration (Form 4) of the same Schedule which all candidates have to deliver with the Nomination Papers (Form 3). In both, the attesting witness must be conscious of the person consenting or subscribing and declaring.

Tengku Korish v. Mohamed & Anor.⁽⁹⁾:

This case dealt with three election petitions all of which were dismissed on the ground that the petitions were not filed within 21 days after the date of publication of the election results in the *Gazette*. At page 7G it was held that:

A "The statutory requirements of election law are mandatory and must be strictly observed."

and reference was made to: *Devan Nair v. Yong Kuan Teik, supra*; *Harcharan Singh v. Mohinder Singh*,⁽¹⁰⁾ *Chong Thain Vun v. Watson & Anor., supra*.

"English parliamentary election law has been the source from which our election law is modelled and therefore it will not be incorrect for this court to receive from it the inspiration and guidance in interpreting our law": *Ali Amberan v. Tunku Abdullah*.⁽¹¹⁾

In *Mather v. Brown*,⁽¹¹⁾ as election case, Lord Coleridge said:

"We...are more especially bound to keep ourselves strictly within the letter of the Acts, and to abstain from any attempt to strain the law."

G Thus in *Moorhouse v. Linney & Ashton*⁽¹²⁾ it was held that the Nomination Paper of a candidate was rightly rejected when the name of one of the assenting burgesses (electors) was given as "Charles Arthur Burman" whereas in the burgess roll the name was "Burman, Charles" although the correct roll number was given, this defect was held not to be a misnomer which could be cured by the equivalent of our Regulation 28.

E In *The Queen v. Tugwell*⁽¹³⁾ where the name and address of the candidate was given but not his occupation it was held by Cockburn C.J. that a total omission is fatal to the validity of voting papers adding "and in the case of a nomination paper it is of great importance to have strict accuracy." In the same case Hannen J. at page 713 said:

"I cannot think it would be right to hold that a nomination paper was valid, notwithstanding a total omission of the description of the candidate."

F This decision was followed in *Baldwin & Ors. v. Ellis & Ors.*⁽¹⁴⁾ where it was held that the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was non-compliance with the rules (for elections). Neither was the omission an "inaccurate description" of the person nominated which could be cured by the rules (our Regulation 28) but was a non-compliance of the rules which cannot be cured. G Swift J. said at page 284:

"I cannot think that the omission to state those particulars (as required by the rules) on a nomination paper is a mere technicality, because unless the parish, for which the person nominated is qualified as a local government elector, is named no one could test whether or not he is qualified. I agree that the deputy returning officer was right in rejecting these nomination papers."

H And in *Gothard v. Clarke*⁽¹⁵⁾ where the electoral number in the nomination paper was stated to be 704 but in the electoral roll it was 695, it was held although no one had been or could be misled by the mistake, that the decision of the returning officer to reject the nomination paper was correct. Lopes J. in the course of his judgment said at page 264:

I "The insertion of a wrong number would be more misleading than inserting no number."

And further on he said:

"It is said, however, that in this case George Chapman is so well known that no person would be misled, and that the case finds no person was misled. If this test was the one intended to be applied, then the mayor (returning officer) in every case, when an objection like the present was taken, would have to hear evidence, and decide how far the in-

accuracy was likely to mislead, or had misled; such loose proceeding never could have been contemplated by the legislature, and the inconvenience of it is too obvious for argument."

Mention must be made of *Marton v. Gorrill*⁽¹⁶⁾ where the omission to state the name of the electoral division although space was provided for it to be inserted was held to be a "mistake in the use of the form" but the decision is peculiar to the facts of that case as the nomination paper referred to the notice of election for that particular constituency.

Finally, there is *Parsons v. Brand*⁽¹⁷⁾ where it was held that a bill of sale given by way of security is void unless both the address and description of the attesting witness appear in the attestation clause. Cotton L.J. said at page 114:

"The form contains a number of blanks for matters which could not be stated in a form, but which must be filled up to make a bill of sale in accordance with the form... I say nothing as to the policy of the legislature; we have only to give effect to what it has enacted, and I am of opinion that the omission of the name and description is fatal."

In the same case Lindley L.J. said:

"I cannot see that a document is in accordance with the form unless all particulars are filled up which the form requires to be filled up."

And Lopes L.J. at page 115 said:

"...the words 'duly attested'... must be read as meaning attested in accordance with the form."

It is, I think, unfortunate that these English cases were not considered in *Abdul Karim v. Mohamed Taib, supra*, but if they had it might well have had a different result. I am of the view and so hold that the correct law to follow in election petitions is that laid down in *Tengku Korish v. Mohamed & Anor., supra*. I further hold that English authorities should be preferred to Indian authorities.

The law then may be summarised as follows:

- (i) Regulation 4(2) provides that Form 3 must be submitted in triplicate.
- (ii) Each copy of Form 3 must be filled up completely and accurately.
- (iii) Omissions cannot be cured by Regulation 28.
- (iv) The Indian provision that a Returning Officer shall not reject a Nomination Paper on the ground of any defect which is not of a substantial character does not apply in Malaysia.
- (v) The duty of a Returning Officer is to see that all blanks in Form 3 are filled up in accordance with Regulation 4(2). If there are any omissions he has the power to reject the Nomination Papers under Regulation 7(1)(b).
- (vi) His next duty is to check the particulars inserted in Form 3 which must also comply with Regulation 4(2). If there are *misnomers* or *inaccurate descriptions* he must decide whether these can be cured by Regulation 28. If they cannot be cured then he has the power to reject the Nomination Papers under Regulation 7(1).

Applying now the law to the facts of the instant case I find that the omission to insert the name of *Setapak* in the space provided therefor by the assenting electors in the Nomination Papers of the petitioner is

A a non-compliance of the Regulations within the meaning of Regulation 7(1)(b) as there has been a failure to comply with Regulation 4(2) of the Regulations.

B The fact that one copy of the Nomination Paper had been completely filled up does not validate the other two copies because Regulation 4(2) requires nomination papers to be submitted in *triplicate*. Further the same regulation provides "Each nomination paper shall be signed..." which means that every copy of the Nomination Paper must comply with the Regulations. The electors of the constituency who were at the foyer outside the Town Hall and in the Nomination Centre must be able to test whether the electors named in the Nomination Papers are qualified to assent. I further find that the omission is not an inaccurate description which can be cured by Regulation 28: *Baldwin & Ors. v. Ellis & Ors., supra*. I therefore hold that the Returning Officer was right in rejecting the Nomination Papers of the petitioner on this ground.

D I also find that the identity card number of the attesting witness is an obvious inaccuracy as it bore eight digits but as the first seven digits were correct and the Returning Officer was able to identify the said witness, the wrong number stated is an inaccurate description which can be cured by Regulation 28. In so finding, I hold that this inaccuracy can be distinguished from the inaccuracy in *Gothard v. Clarke, supra*, where the entire number was wrong. I, therefore, hold that the Returning Officer was in error in rejecting the petitioner's Nomination Paper on this ground. Finally I hold that on the facts, the Returning Officer was right in rejecting the objections raised against the Nomination Papers of the first respondent and in accepting his nomination.

F In accordance with section 36 of the Election Offences Act, 1954 I determine that Mohd. Idris bin Haji Ibrahim, the first respondent was duly returned to the Setapak Parliamentary Constituency and I shall so certify to the Election Commission.

G And in accordance with section 37 of the said Act I shall report to the Election Commission that no corrupt or illegal practice has been proved to have been committed.

H For these reasons, I dismiss the petition. As regards costs in accordance with rule 32 of the Election Petition Rules, I hold that as the petition was founded on *Abdul Karim v. Mohamed Taib & Anor., supra*, the petitioner to pay the taxed costs of the first respondent only. Moneys deposited by way of security may be applied towards payment of taxed costs.

Petitions dismissed.

Solicitors: *Datuk Wan Mustapha & Co.; John Ang & Co.; Rithauddeen & Aziz.*